Public Prosecutor v Chan Chuan & Anor

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 25 OF 1989
COOMARASWAMY J
3 JANUARY 1991

Criminal Procedure — Sentencing — Caning — Two or more sentences — Whether caning should be concurrent — Mitigation — Arms offences — Accused co-operating with police — Accused indicating intention to plead guilty early — Provider of gun warranting more than the minimum sentence — Criminal Procedure Code (Cap 68, 1985 Ed), ss 17, 229 & 230

Criminal Law — Arms offences — Mandatory prison sentence — Accused playing secondary role — Provider of gun warranting more than minimum sentence — Arms Offences Act (Cap 14, 1985 Ed), s 3(2) & (3)

The two accused were arrested for robbery and abduction. The first accused was found to have been in possession of a .38 revolver at the time of the offence. Both accused were charged under the Arms Offences Act (Cap 14, 1985 Ed) ('the Act'). In the course of investigations, the second accused was found to have committed another offence of robbery while armed with a revolver. He was charged under the Act for this offence. Both accused persons pleaded guilty.

Held, convicting both the accused:

(1) There was no provision in the Criminal Procedure Code (Cap 68, 1985 Ed) that provided for two sentences of caning where an accused was found guilty of more than one offence to be concurrent. The sentences of caning were to be aggregated provided that, in the case of an adult, the maximum of 24 strokes was not exceeded.

(2) The first accused was sentenced to three more strokes than the minimum because he was the provider of the revolver and it was obvious that he had recruited the second accused.

(3) The second accused co-operated with the police and indicated at the commencement of the preliminary inquiry that he was going to plead guilty. These were found to be mitigating factors and the second accused was sentenced to the minimum punishment.

Legislation referred to
Arms Offences Act (Cap 14, 1985 Ed) s 3
Criminal Procedure Code (Cap 68, 1985 Ed) ss 17, 229, 230

Lee Sing Lit (Deputy Senior State Counsel) for the Public Prosecutor.
First accused in person.
Gopal Perumal for the second accused.

Cur Adv Vult

Coomaraswamy J: In Criminal Case No 25 of 1989, Chan Chuan @ Chan Kah Chen, the first accused (who faced two charges) and Kwang Swee Ling, the second accused, have each appealed against their respective sentences.

The second accused who faced another charge in Criminal Case No 26 of 1989 (wherein he is referred to as 'the accused') has also appealed against sentence.

Each accused pleaded guilty before me to each of the charges against him. The first accused appeared in person and the second accused was represented by counsel.

The amended charges against the first accused in Criminal Case No 25 of 1989 read:

> First charge
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> You, Chan Chuan @ Chan Kah Chen, are charged that on or about 26 February 1987 at about 9am at No 642-A Geylang Road, Singapore, in the company of one Kwang Swee Ling, committed a scheduled offence, to wit, robbery, and at the time of the commission of the aforesaid offence, you had on your person an arm, to wit, a .38 inch calibre revolver, and you have thereby committed an offence punishable under s 3(3) of the Arms Offences Act (Cap 14, 1985).
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> Second charge
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> You, Chan Chuan @ Chan Kah Chen, are charged that on or about 26 February 1987 at about 9.05am, at the junction of Lorong 38 Geylang and Geylang Road, Singapore, committed a scheduled offence, to wit, abduction, and at the time of the commission of the aforesaid offence, you had on your person an arm, to wit, a .38 inch calibre revolver, and you have thereby committed an offence punishable under s 3(3) of the Arms Offences Act (Cap 14, 1985 Ed).

The amended charge against the second accused was:

> You, Kwang Swee Ling, are charged that on or about 26 February 1987, at about 9am, at No 642-A Geylang Road, Singapore, were in the company of one Chan Chuan @ Chan Kah Chen, who was unlawfully carrying an arm, to wit, a .38 inch calibre revolver, in circumstances which raised a reasonable presumption that you knew that the said Chan Chuan @ Chan Kah Chen was carrying such arm, and you have thereby committed an offence punishable under s 7 read with s 3(2) of the Arms Offences Act (Cap 14, 1985 Ed).

The first accused was 49 years old. He was unemployed. The second accused was 46 years old. He was a hawker. The complainant, one Koh Kiang Soong, was 47 years old. He was described as the managing director of Wee Hwa Enterprises Co at No 642-A Geylang Road, Singapore.

On 26 February 1987 at about 9am, the complainant arrived at his office. The two accused approached him as he was opening the door to his office. The first accused was carrying a .38 inch calibre revolver and the second accused was carrying a knife. The latter pointed the knife at the complainant and warned him not to raise any alarm. He then relieved the complainant of the following items:

(1) cash of $4,000;
(2) two credit cards;
(3) a Rolex watch valued at $5,000;
(4) a Dupont ballpoint pen valued at $400;
(5) a diamond ring valued at $2,000;

(6) two cheques; and
(7) some house and office keys, a pager and some documents.

After robbing the complainant, the first accused stopped a motor van at the junction of Lorong 38, Geylang and Geylang Road and ordered its driver to drive him off. He directed the driver and got off at the hawkers' centre at Block 117, Aljunied Avenue 2.

From the scene, the second accused ran into Lorong 38, Geylang.

Later, the first accused sold the Rolex watch for $3,500 and the diamond ring for $800. According to counsel for the second accused, his share of the loot was $3,750.

The first accused was arrested at his friend's house on 3 September 1987. The second accused surrendered himself to the police on 6 October 1987. After the surrender, he led the police to recover the revolver (which he had used in a later offence) and five rounds of ammunition at a rented room.

In Criminal Case No 26 of 1989, the charge against the accused was amended to read:

> You, Kwang Swee Ling, are charged that on or about 26 July 1987 at about 9.30am at Block 122 Yishun Street 11, Singapore, in the company of one Nang Chang Hut and one Ang Boon Seng, committed a scheduled offence, to wit, robbery, and at the time of the commission of the aforesaid offence, you had on your person an arm, to wit, a revolver and you have thereby committed an offence punishable under s 3(3) of the Arms Offences Act (Cap 14, 1985 Ed).

The complainant in this case was one Tay Chee Seng, 48 years old, who lived at the aforesaid address.

On 26 July 1987 at about 8.30am, the accused, was armed with a revolver. This was not made known to his two accomplices (who he had recruited), one Nang Chang Huat ('Nang') and one Ang Boon Seng ('Ang') until he produced it during the robbery. Nang was armed with a knife. And had a coil of wire with him. Together they waited for the complainant to leave his house.

When the complainant came out, the accused and Nang accosted him. The accused took out his revolver while Nang held up the complainant at knife point. They then relieved him of the following items:

(1) a wallet containing cash of $2,500, an identity card, a driving licence and some car keys;
(2) a gold chain valued at $1,500;
(3) a gold bracelet valued at $2,000;
(4) a Rolex watch valued at $5,000; and
(5) a pair of glasses valued at $100.

Meanwhile, Ang tied the complainant's hands and legs with the coil of wire. After the robbery, the accused and his two accomplices pushed the complainant onto the floor and fled.

The accused later sold the gold chain, gold bracelet and Rolex watch for $10,300. His share of the loot, according to his counsel, was $4,500.

Each accused admitted the facts as read out by the learned deputy public prosecutor on each of the respective charges against him. Each also understood the nature and consequences of his plea of guilty to each charge in each case.

I convicted both accused on the charges each faced. No antecedents of a similar nature were known of both accused.

Mitigation

The first accused: The first accused through the court interpreter said that he was getting on in age. He pleaded for leniency.

The second accused: Counsel for the accused admitted the charges were serious infractions of the laws of our society. The accused realized and acknowledged that he would have to suffer the punishment meted out.

The accused claimed he committed these offences only because of the pressure put on him by loan sharks from whom he borrowed money from time to time. He incurred debts in the course of business as an owner of a coffeeshop. He was introduced to the first accused who had a revolver and had a plan to commit robbery.

In the first case, he himself did not carry the revolver. In the second case, he carried the revolver. In neither instance, although the revolver was carried and displayed to the victim, was it discharged and there was no loss of life.

He is married and has three small school-going children. He also has an aged mother. Before he was arrested, he was the sole supporter of his family.

The accused was remorseful of what he had done. He demonstrated this when he surrendered himself to his detective friend even though he was advised that it was a life sentence that he would be facing. Since his surrender, he had fully co-operated with and assisted the police. In all his statements, he had admitted to the commission of the offences and he had also led the police to recover the revolver and the ammunition.

Counsel further added that his plea of guilty was itself a mitigating factor. The sentence under s 3(3) of the Act is mandatory — life imprisonment with six strokes of the cane. The minimum sentence under s 3(2) of the Act is five years' imprisonment and six strokes of the cane. Counsel urged the court to impose

the minimum sentence under s 3(2) of the Act and to backdate the sentence to the time of his surrender.

Sentences

The punishment provided under s 3(2) of the Act is imprisonment for a term of not less than five years, not more than 14 years and caning of not less than six strokes. Under s 3(3) of the Act, it is life imprisonment and caning of not less than six strokes.

The first accused:

On the amended first charge under s 3(3) of the Act, I sentenced the first accused to life imprisonment and nine strokes of the cane.

On the amended second charge under s 3(3) of the Act, I sentenced the first accused to life imprisonment and nine strokes of the cane.

The terms of imprisonment were made concurrent and to commence from the date of his arrest. The total punishment is life imprisonment and 18 strokes of the cane. I will deal with the 18 strokes later.

These offences involving the use of a revolver are of a very serious nature. The victim was an innocent man going to work. He was waylaid and held up with a revolver. He was deprived of the valuable items enumerated above.

On each charge, I meted out three more strokes of the cane than the minimum punishment. I did so because he was the provider of the arm used and it was obviously he who recruited the second accused to join him in committing the offence. In my view, these factors warranted something more than the minimum punishment.

The second accused:

As for this accused who faced a more serious charge in Criminal Case No 26 of 1989, I sentenced him to life imprisonment and six strokes of the cane. The prison sentence is mandatory under s 3(3) of the Act. The six strokes are the minimum mandatory sentence under that provision.

The minimum mandatory sentence under s 3(2) of the Act is five years' imprisonment and six strokes of the cane.

I sentenced the second accused in Criminal Case No 25 of 1989 to six years' imprisonment and six strokes of the cane. He played a secondary role in this case.

The terms of imprisonment were made concurrent which meant the six years' imprisonment on the charge in Criminal Case No 25 of 1989 was of no effect in view of the life imprisonment under the charge in Criminal Case No 26 of 1989. His total punishment was life imprisonment and 12 strokes of the cane. The imprisonment term was to start on the day of his surrender.

I had taken into account the fact that he surrendered to the police although this must necessarily be qualified by his undoubted knowledge of the first accused's arrest almost five weeks earlier. I had also noted that the second accused co-operated with the police. What was more important, the second accused indicated an intention to plead guilty at the commencement of the preliminary inquiry. These factors led me to give him the effective minimum punishment on the two charges.

The reason I made the distinction in the sentencing of the two accused was that the gun originally came from the first accused. It was obviously passed by the first accused to the second accused for use by the latter in the later offence.

Caning for two offences at one trial

There is no provision in the Criminal Procedure Code (Cap 68, 1985 Ed) ('CPC') which provides for two or more sentences of caning where an accused is found guilty of more than one offence (with caning in the punishment of each) to be 'concurrent'. The only provision remotely material is s 230 which reads:

> When a person is convicted at one trial of any two or more distinct offences any two or more of which are legally punishable by caning the combined sentence of caning awarded by the court for any such offences shall not, anything in any Act to the contrary notwithstanding, exceed a total number of 24 strokes in the case of adults or 10 strokes in the case of youthful offenders.

Section 229 also imposes a maximum of 24 strokes for adults at one trial. In my view, where ss 229 and 230 apply, the sentences of caning are to be aggregated provided that, in the case of an adult, the maximum of 24 strokes is not exceeded. Sections 229 and 230 also provide certain safeguards for a convicted person ordered to be caned.

My view that the sentences for caning for two or more distinct offences resulting in convictions at one trial do not merge but instead are aggregated is supported by s 17 of the CPC. Section 17 enables a court in convictions in identical circumstances to direct the sentences of imprisonment to run concurrently. Where the legislature has made provision for concurrence or merger with regard to sentences of imprisonment but is silent on caning except to impose a limit of 24 strokes, it can only mean that subject to the specified maximum, the number of strokes for one offence shall be aggregated to the number of strokes for another.

I have given my reason for ordering strokes in excess of the minimum of six for each offence for which the first accused was found guilty.

As far as I can see, the only ground for complaint either accused may have on the caning sentences is that the number of strokes he is to receive for one offence did not merge into the number of strokes for the other. In my view, with the provision for minimum sentences of strokes of the cane for the two offences each respectively pleaded guilty to and my reading of the effect of s 17 upon the punishment of caning, I had no alternative but to direct that the number of strokes for one offence in each case shall be aggregated with the number of strokes for the other offence for which that accused was convicted. In my view, the aggregation will take place even without my direction.

I also ordered that the exhibits used in the above two criminal cases be retained by the police until another related case is heard and that the exhibits be disposed of by the judge who will hear that case.

Order accordingly.

Solicitors: *Gopal & Tan.*

Reported by *Mathavan Devadas*

Commercial Union Assurance Co plc v Lee Siew Khuan

HIGH COURT (SINGAPORE) — DISTRICT COURT APPEAL NO 35 OF 1989
CHAN SEK KEONG J
29 NOVEMBER 1990

Insurance — Personal property covered under an 'All Risks' policy — Loss — No finding as to when and where property was lost — Whether plaintiff had failed to prove his claim

Evidence — Expert witness — Valuation of diamond gold ring by an advocate and solicitor — Whether he qualifies as an expert witness

Words and Phrases — 'Expert'

The plaintiff made a claim against the defendants, an insurance company, under an 'All Risks' policy for various personal items that he claimed he had lost during a visit to Perth, Australia. The plaintiff could not account for how he lost the items. The insurance company refused to pay and put the plaintiff on strict proof. At the trial, the court was satisfied that the plaintiff was telling the truth and allowed the claim.

The insurance company now appeals against the decision on the following grounds: the plaintiff's account was inherently incredible, and that it was necessary for the court to find when the loss occurred but had failed to do so. The insurance company also argued that the plaintiff had failed to prove the value of one of the items, a ring, as the court had relied on the evidence of an advocate and solicitor in assessing the value of the ring. The defendant also appealed against the order of costs, on the basis that since it had succeeded on several issues, the court should have awarded costs be borne equally or in some other proportion.

Held, dismissing the appeal:

(1) The plaintiff's account of the loss was not inherently incredible or incomprehensible.

(2) It was not necessary for the court to make a finding as to when or where exactly the loss occurred in this case. The crucial issue was whether the plaintiff had lost the property. The district judge found in the plaintiff's favour and it would be wrong now to disagree with such finding of the district judge which was based on an assessment of the plaintiff's credibility as a witness.

(3) An expert need not be qualified professionally to be accepted as an expert. If the court is satisfied that the witness has sufficient knowledge or expertise to qualify as an expert, he can be regarded as such. The court was entitled to rely on the evidence of the advocate and solicitor as he was shown to know enough about diamonds to assess their value.

(4) The taxing registrar should take into account, when taxing the plaintiff's bill of costs, any claim for costs on issues in respect of which he has failed.

Cases referred to

1 *Blay* v *Pollard & Anor* [1930] 1 KB 628 (refd)
2 *Esso Petroleum Co Ltd* v *Southport Corp* [1956] AC 218 (refd)
3 *Regina Fur Co Ltd* v *Bossom* [1958] 2 Lloyd's Rep 425 (refd)
4 *PP* v *Muhamed bin Sulaiman* [1982] 2 MLJ 320 (folld)

Appeal from: DC Suit No 7423 of 1987 (District Court, Singapore)

Gan Hiang Chye for the appellants/defendants.
David Hew for the respondent/plaintiff.

Cur Adv Vult

Chan Sek Keong J: This is an appeal by the defendants against the decision of the district judge ordering the defendants to pay to the plaintiff the sum of $24,000 for the loss of a diamond gold ring ('the diamond ring') and $400 for the loss of a Dupont diamond-studded ball-pen ('the Dupont pen'), and interest thereon.

The plaintiff's claim was made under an 'All Risks' insurance policy issued by the defendants and was for the value of lost property covered by the said policy. The plaintiff had claimed the sum of $44,000 ($14,400 for a Rolex watch with diamonds and $30,000 for the ring) and damages to be assessed for the Dupont pen, cash of A$1,000 and cash of $600. The cash claims were withdrawn at the commencement of the hearing. The claim for the loss of the Rolex watch failed for lack of evidence of value.

The plaintiff's case, as pleaded in the statement of claim, was as follows:

> 2 During the currency of the policy, namely, between 30 November 1986 to 3 December 1986 whilst on a visit to Perth, Australia, the plaintiff lost the insured property together with [the pen and the said cash].
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> 3 On the plaintiff's return to Singapore, a police report was immediately lodged on 4 December 1986. The de-